

Selected Documents from Claim File

Claim No. LRF-1999-0427-03

Claim Amt. : \$949.91 Initial Entry Date : 05/20/1999

Claimant : JACK B PARSON COMPANIES

Property Desc. : SEE COMMENTS

Property Addr. : 2535 E ALTA CANYON DR
SANDY, UT 84093

STATUS : PENDING (BOARD HEARING)

Associated Addresses

Type : Claimant Legal Counsel

DOPL # : - -

Firm Nm : Van Cott Bagley Cornwall & McCarthy

Name : Lisa R. Peterson

PO Box 45340

50 S Main Ste 1600

Salt Lake City, UT 841450340

(801) 532-3333

Type : Claimant Address

DOPL # : 22-241411-5501

Firm Nm :

Name : Jack B. Parsons Company

2350 S 1900 W

Ogden, UT 844013216

(801) 731-1111

Type : Home Owner - Secondary

DOPL # : - -

Firm Nm :

Name : Julie L. Brooks

2535 E Alta Canyon Dr.

Sandy, UT 84093

() -

Type : Home Owner - Primary

DOPL # : - -

Firm Nm :

Name : Jack Brooks

2535 E Alta Canyon Dr.

Sandy, UT 84093

() -

Type : Non-Paying Party - Primary

DOPL # : 97-344226-5501

Firm Nm : D V Construction, Inc.

Name : Pevita (Dave) Vaea

1515 S 1200 W

Salt Lake City, UT 841042166

(801) 232-8159

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Type : Original Contractor/Developer

DOPL # : 97-344226-5501

Firm Nm : DV Construction		
Name : Tevita (Dave) Vaea		
1515 S 1200 W		
Salt Lake City, UT 84104		
(801) 232-8159		
NO DEMOGRAPHIC HISTORY FILE		
===== CLAIMS PROCESSING INFO =====		
	Date Recieved	Date Forwarded
Front Desk	04/27/1999	04/27/1999
LRF Special-Setup, Filing, CRIS	04/27/1999	
Permissive Party Response	06/02/1999	DEADLINE*****
Screen C/D Letter	08/31/1999	11/01/1999
Comments	Page: 001	UserID: ewebster
Conditional Denial letter sent August 31, 1999, with response due date of September 30, 1999 later extended to November 1, 1999. Reasons for conditiona denial were:		
1. No proof of a written contract		
2. No proof of payment in full		
3. No proof of owner-occupied residence		
Received response to August 31, 1999, Conditional Denial letter on November 1, 1999. Response does not include all necessary documentation. Second Conditional Denial letter sent November 1, 1999, with response due date of December 1, 1999. Reasons for second conditional denial:		
1. No proof of a written contract		
2. No proof of owner-occupied residence.		
Claimant Response C/D Letter	11/01/1999	11/01/1999
Subpoena Request	11/29/1999	01/10/2000
Comments	Page: 001	UserID: ewebster
Requested administrative subpoena to assist Claimant in collecting needed documents--homeowner is upset with Claimant and refuses to provide Owner-Occupied Residence affidavit.		
Subpoena Response	01/10/2000	01/10/2000
Comments	Page: 001	UserID: ewebster
Claimant provided timely response to subpoena procedure. Processing claim.		
Substantive Review	01/13/2000	
Comments	Page: 001	UserID: ewebster
Claimant is a supplier. Claimant provided concrete and incidental materials for use in the construction of a driveway on the incident residence.		
The claim is essentially complete. The only issue of note is whether the homeowners entered into a written contract with the original contractor. As noted in the Factual Findings, the original contractor did provide some written documentation to the homeowner. However, the homeowner did not provide any written verification of acceptance.		

Despite the issue of the written contract, Examiner believes Claimant has established compliance with all requirements of the Act. Therefore, Examiner recommends the claim be paid in the amounts shown on the Payment Checklist.

One additional note, the interest and costs have been calculated in accordance with the procedure adopted for all related claims. Namely, the law & rules in effect on April 27, 1999, are considered binding.

Claim Disposition Approve

Board Disposition ***

JURISDICTIONAL CHECKLIST =====

Completion Of QS	05/19/1998
Civil Bkcy Filing	10/09/1998
Difference	143

Comments Page: 001 UserID: ewebster

Qualified services date per judgement findings (pg 20 para. 10)

Civil action filing date per court date stamp (pg 17)

Civil Judg/Bkcy Filing	12/28/1998
LRF App Filing	04/27/1999
Difference	120

Comments Page: 001 UserID: ewebster

Judgement entry date per judge's signature (pg 15 - 16)

Claim filing date per DOPL date stamp (pg 1)

===== COMPLETE APPLICATION CHECK-LIST =====

Form Submitted	Yes	04/27/1999		
Form Completed	Yes	01/10/2000		
Fee	Yes	04/29/1999	9119-61-0030	ICN
Signed Cert/Aff	Yes	04/21/1999		
Cert of Service	Yes	04/27/1999		
Demog. Questionnaire	Yes	04/27/1999		

===== SUPPORTING DOCUMENTS =====

Page: 3

Written Contract	Yes	Affidavit/Ind Evidence	03/21/1998
Licensing Statute	Yes	License	09/25/1997
Full Payment	Yes	Affidavit Ind/Evidence	03/21/1998
Civil Action/Bankrupt	Yes	Complaint	10/09/1998
Entitlement to Pmt.	Yes	Civil Judgment	12/28/1998
Exhaust Remedies	Yes	SO/RS/WE/RE	03/16/1999

===== REQUIRED FACTUAL FINDINGS CHECK-LIST =====

Claimant Qualified Beneficiary	Yes
Comments	Page: 001 UserID: ewebster
Claimant registered with the Fund October 26, 1995 as a supplier (ICN 5299-61-0048). Registration has remained current since that date.	
Written contract exists	Bd
Comments	Page: 001 UserID: ewebster
Claimant has provide all of the information at its disposal relative to whether a written contract existed. The only actual document executed between the homeowners and the original contractor is entitled "DV Const. Estimate" (pg 56) and is dated March 21, 1998.	
The estimate states the project is for construction of a driveway at the incident residence. The estimate provides dimensions for the driveway and a list of expected materials. The estimate does not give an expected price but does include a subsequent adjustment to show the actual price and payment information (see PIF section). Finally, the estimate is signed by the qualifier for the original contractor but is not signed by any other party--in fact, the estimate does not have provision for signature by any other party.	
Original Contractor Licensed	Yes
Comments	Page: 001 UserID: ewebster
Original Contractor holds license 97-344226-5501 as a B100 General Building Contractor. That license was issued September 25, 1997 and has been active & in good standing since that date. (Note: Fund personnel recently referred this license for financial responsibility review because the licensee declared bankruptcy subsequent to the claim filing).	
Owner PIF to Contractor	Yes
Comments	Page: 001 UserID: ewebster
Claimant provided copies of NPP's accounts receivable records and homeowners' payment checks to establish payment in full (pg 43 - 45). Those documents show the final contract price was \$2,100. NPP accepted partial payment in the form of golf clubs and hats (total \$829). No documentation of that transaction is available other than NPP's notes on the estimate and accounts receivable records. The homeowners paid the remaining balance of \$1,271 by personal check (#2048)--a copy of which is included with the application.	
Residence Own/Occ as defined	Yes
Comments	Page: 001 UserID: ewebster
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Claimant provided complete Owner-Occupied Residence affidavit. That affidavit shows construction was completed May 1, 1998 and the residence was occupied before, during, and after construction (pg 53).	
Residence Single Family/Duplex	Yes
Comments	Page: 001 UserID: ewebster
Per Owner-Occupied Residence affidavit.	
Contract For QS	Yes

Per judgement finding (pg 17 - 28) para. 10 Claimant provided concrete materials and incidental equipment for use at the incident residence.

Claimant brought Civil Action Yes

Default judgement in favor of Claimant and against NPP was issued December 28, 1998 (pg 15 - 16).

Exhausted Remedies Yes

Supp Order was issued and served on NPP March 16, 1999. NPP failed to appear at Supp Proceeding (pg 12 - 14).

LRF personnel have independently verified that all attempts to contact NPP are futile.

Adequate \$ in LRF Fund Yes

Statutory Limit/Payment no

No other payments for incident residence.

Exceed Monetary Cap No

To date Claimant has received payments totalling \$14,089.

Un-reimbursed Payments no

To date Fund has made payments on behalf of Claimant totalling \$0 and has received \$0 of reimbursements.

Claim Number:	LRF-1999-0427-03	NCA Number:	NCA-1999-0122-10	Claim Type:	Informal
Claimant Name:	JACK B PARSON COMPANIES				
	Jdg. \$ Informal / Payable \$ Formal	Apportioned % 100.00	CLAIMED	DIFERENCES	
PRINCIPAL AMOUNT	705.16	705.16	705.16	0.00	
ATTORNEY FEES	12.34	12.34	12.34	0.00	
COSTS	1.93	1.93	1.93	0.00	
INT. % 5.00	18.64	18.64	43.31	24.67	
PRE SUB-TOTAL	32.91	32.91	57.58	24.67	
ATTORNEY FEES	170.81	170.81	170.81	0.00	
COSTS	135.00	135.00	70.00	-65.00	
INT. % 5.00	11.50	11.50	16.36	4.86	
POST SUB-TOTAL	317.31	11.50	257.17	-60.14	
TOTAL*****	1,055.38	1,055.38	1,019.91	-35.47	

QUALIFIED SERVICES COMMENT

Comments	Page: 001	UserID: ewebster
Qualified services amount per judgement findings (pg 17 - 28 para. 10d)		
PRE JUDGEMENT ATTORNEY FEE COMMENT		
Comments	Page: 001	UserID: ewebster
Total attorney fees for all related claims per judgement (pg 15 - 16). Allocation per Claimant (pg 7 - 8) verified by LRF personnel.		
PRE JUDGEMENT COSTS COMMENT		
Comments	Page: 001	UserID: ewebster
Total pre-judgement costs per judgement (pg 15 - 16). Allocation of costs per Claimant (pg 7 - 8) verified by Examiner.		
PRE JUDGEMENT INTEREST COMMENT		
Comments	Page: 001	UserID: ewebster
Judgement does not specify an interest rate. Claim was filed prior to statute rate of 12%. Rate determined at 5% per Utah Admin Code R156-38-204d(1)(b)(iii).		
Pre-judgement interest dates are:		
PAYMENT DUE DATE: June 18, 1998. Claimant did not provide any information on when payment was due by NPP. Due date estimated as 30 days beyond qualified services date because industry norm is terms of n/30.--Pre-judgement interest begins this date.		
JUDGEMENT DATE: December 28, 1998. Taken from judge's signature (pg 19)--Pre-judgement interest terminates this date.		
POST JUDGEMENT ATTORNEY COMMENT		
Page: 6		
Comments	Page: 001	UserID: ewebster
Affidavit of Costs & Fees filed with claim LRF-1999-0427-02 shows total costs and fees for all claims 1999-0427-01 through 1999-0427-07. Pursuant to that affidavit, this claim had total eligible post-judgement attorney fees of \$170.81. Utah Admin Code R156-38-204d(1)(b)(ii)(B) limit for this claim is \$232.70.		
Judgement provided sum certain pre-judgement attorney fees of \$12.34. Therefore, after the limit, remaining possible attorney fees are \$220.36. Claimant is awarded fees up to that limit.		
POST JUDGEMENT COSTS COMMENT		
Comments	Page: 001	UserID: ewebster
\$75 of costs for claim filing fee. Claim filed prior to effective date of current UCA 38-11-203(3)(d).		
\$60 for service of administrative subpoena (pg 47).		
POST JUDGEMENT INTEREST COMMENT		
Comments	Page: 001	UserID: ewebster

Judgement does not specify an interest rate nor does it provide interest must be paid until judgement is settled. Therefore, interest is calculated at 5% from the judgement date to the claim filing date per Utah Admin Rule R156-38-204d(1)(b)(iii).

NO Disposition Checklist Information

Minutes from Board Meeting Discussion
Claim No. LRF-1999-0427-03

February 16, 2000

Mr. Techmeyer recused himself because he is a former employee of Jack Parson. Mr. Larsen expressed two concerns with this claim. First was the issue of payment in full. More than eight hundred dollars was bartered; Vaea (the original contractor) accepted golf clubs and cowboy hats as payment. Mr. Larsen cited §38-1-20, which indicates that something must be posted on the jobsite when barter is used for payment.

UCA § 38-1-20. As to all liens, except that of the contractor, the whole contract price shall be payable in money, except as herein provided, and shall not be diminished by any prior or subsequent indebtedness, offset or counterclaim in favor of the owner and against the contractor, except when the owner has contracted to pay otherwise than in cash, in which case the owner shall post in a conspicuous place on the premises a statement of the terms and conditions of the contract before materials are furnished or labor is performed, which notice must be kept posted, and when so posted shall give notice to all parties interested of the terms and conditions of the contract. Any person willfully tearing down or defacing such notice is guilty of a misdemeanor.

Additionally, Mr. Larsen pointed out that he did not feel a written contract had been provided. Mr. Bankhead moved to deny the claim because there was not a written contract and unusual payment arrangements. Mr. Hunt advised that the statute does not define payment in full; it would be better to leave that out of the motion. Mr. Patterson agreed and noted that case law would support signed documents such as this claim has as a signed contract. However, he has not reviewed this particular claim. Mr. Bankhead moved to deny payment; Mr. Arbuckle seconded. Chairman Techmeyer abstained. Mr. Burton and Mr. Weller voted against denial. Mr. Burton asked whether this wording (§38-1-20) should be grafted into §38-11 et seq. In response to a comment by a board member that 25 minutes had been spent trying to determine if full payment had been made and a written contract submitted, Mr. Webster indicated that he was unwilling to make the decision without board discussion.

Editor's note: because of the 3-2 split vote on the Board's recommendation, the Director elected to review the claim personally. Upon review and consultation with legal counsel, the Director concluded payment in a form other than money was acceptable and that a written contract did exist. Therefore, the claim was approved and paid.

**BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

IN THE MATTER OF THE LIEN RECOVERY :	ORDER
FUND CLAIM OF JACK B. PARSON :	
COMPANIES , REGARDING THE :	
CONSTRUCTION BY TEVITA (DAVE) :	
VAEA d/b/a D V CONSTRUCTION , ON THE :	Claim No. LRF-1999-0427-03
RESIDENCE OF JACK & JULIE BROOKS :	
LOCATED AT 2535 EAST ALTA CANYON :	
DRIVE, SANDY, UTAH 8493 :	

Pursuant to the requirements for a disbursement from the Residence Lien Recovery Fund set forth in UTAH CODE ANN. § 38-11-203(1) (1998) the Director of the Division of Occupational & Professional Licensing of the State of Utah, being advised by the Residence Lien Recovery Fund Board and being apprized of all relevant facts finds that:


1. The claimant was a qualified beneficiary during the construction on a residence;
2. The claimant complied with the requirements of UTAH CODE ANN. § 38-11-204;
and
3. There is adequate money in the fund to pay the amount ordered.

WHEREFORE, the Director of the Division of Occupational & Professional Licensing orders that the above-encaptioned claim is payable from the Residence Lien Recovery Fund, and that Claimant be paid \$705.16 for qualified services, plus \$1.93 in pre-judgment costs, \$12.34 in pre-judgment attorney fees, \$18.64 in pre-judgement interest, \$135.00 in post-judgment costs, \$170.81 in post-judgment attorney fees, and \$11.50 in post-judgement interest for a total claim of \$1,055.38

The Director of the Division of Occupational and Professional Licensing also orders that

\$29.53 of the amounts claimed in the above-encaptioned claim be denied. The specific amounts denied and reasons for denial are as follows: \$24.67 for pre-judgment interest exceeding the limit set forth in UTAH ADMIN. RULE R156-38-204d(1)(b)(iii) (1998) and \$4.86 for post-judgment interest exceeding the limit set forth in UTAH ADMIN. RULE R156-38-204d(1)(b)(iii) (1998).

DATED this 07 day of MARCH, 2000.


A. Gary Bowen, Director

CHALLENGE AFTER DENIAL OF CLAIM:

Under the terms of UTAH ADMINISTRATIVE CODE, § R156-46b-202(j) (1996), this claim has been classified by the Division as an informal proceeding. Claimant may challenge the denial of the claim by filing a request for agency review. **(Procedures regarding requests for agency review are attached with Claimant's copy of this Order).**